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APPELLEE'S SUPPLEMENTAL RECORD

United States Court of Appeals
FOR THE EIGHTH CIRCUIT.

No. 15,833.
CIVIL.

FRED W. STOVER,
Appellant,

vs.

FARMERS' EDUCATIONAL AND COOPERATIVE UNION OF AMERICA, a Corporation,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA.

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The plaintiff asked that the trial court take judicial notice of the record made before Judge Roy W. Harper upon which the injunction was issued herein (R. 12, 13). Plaintiff accordingly offered in evidence, as Exhibit 1, the printed record which was filed in this Court on appeal from the injunction decree and the same was admitted without objection (R. 12, 13). Plaintiff also offered in evidence all of the exhibits that were introduced at the trial of the injunction case (R. 14). Defendant objected to the exhibits other than exhibits I-1, I-2, and I-3, the Registrations in the Patent Office, which were not objected to (R. 14). There were additional exhibits offered by both sides at the trial. Appellant's Record lists said exhibits by letter or number and briefly describes them but does not set out any exhibit in full (R. 75, 76). Appellee feels that certain parts of the exhibits are so important that they should be set out in detail and for that purpose files its Supplemental Record as follows.

EXHIBIT I-1.

Exhibit I-1, the registration on the Principal Register of the United States Patent Office of plaintiff's service mark, "Farmers Union," is as follows:

No. 557,013

(Seal)

THE UNITED STATES OF AMERICA

To All to Whom These Presents Shall Come:

This is to certify that by the records of the United States Patent Office it appears that Farmers Educational and Cooperative Union of America, of Denver, Colorado, a corporation of Texas, did, on the 20th day of August, 1947, duly file in said Office an application for Registration of a

certain SERVICE MARK shown in the Drawing for the SERVICES specified in the Statement, a copy of which Drawing and Statement, together with the Declaration, is hereby annexed and made a part hereof, and duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the Commissioner of Patents.

And, upon due examination, it appearing that the said applicant is entitled to have said Mark registered under the Trade-Mark Act of 1946, the said Mark has been duly registered this day in the United States Patent Office on the

PRINCIPAL REGISTER

to Farmers Educational and Cooperative Union of America, its successors or assigns.

This certificate shall remain in force for Twenty Years unless sooner terminated as provided by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this first day of April, in the year of our Lord one thousand nine hundred and fifty-two, and of the independence of the United States the one hundred and seventy-sixth.

s/ John A. Marzall
Commissioner of Patents

(Seal)

Attest: P. Wm. Iselnan
Law Examiner

Registered Apr. 1, 1952 Registration No. 557,013

PRINCIPAL REGISTER

Service Mark

UNITED STATES PATENT OFFICE

Farmers Educational and Cooperative Union of America, Denver, Colo.

Act of 1946

Application August 20, 1947, Serial No. 531,900

FARMERS
UNION

STATEMENT

Farmers Educational and Cooperative Union of America, a corporation duly organized under the laws of the State of Texas, having its national offices and place of business at 1455 Sherman Street, Denver, Colorado, has adopted and is using the service mark shown in the accompanying drawing, for SERVICES COMPRISING THE DISSEMINATION OF INFORMATION PERTAINING TO FARMING AND RELATED INDUSTRIES, AND PARTICULARLY INFORMATION IN CONNECTION WITH COOPERATIVES TO AID THE FARMER IN MARKETING HIS PRODUCE. INFORMATION RELATING TO EDUCATIONAL AND ENTERTAINMENT PROGRAMS FOR FARMERS AND THEIR FAMILIES, INFORMATION AS TO PROPOSED LEGISLATION THAT DIRECTLY OR INDIRECTLY MAY AFFECT THOSE ENGAGED IN FARMING AND RELATED INDUSTRIES AND SERVICES TO AND FOR THE FARMER RELATING TO STORAGE OF PRODUCE, THE MAKING OF MORTGAGE LOANS, THE BROKERAGE OF PRODUCE AND LIVESTOCK, THE SALE OF INSURANCE, AND THE SERVICING OF FARM EQUIPMENT, in Class 102, Insurance and financial, and presents

herewith specimens showing the service mark as actually used in connection with the sale or advertising of such services; the service mark being used as follows by applicant and also its chartered subordinate state and local organizations, together with related organizations and affiliated companies: On buildings and other signs, on publications by applicant or related organizations, on business stationery and forms, on various advertising matter, and on literature and publications of applicant and related organizations, and requests that the same be registered in the United States Patent Office on the Principal Register in accordance with section 2(f) of the act of July 5, 1946.

The service mark was first used on or about the year 1902, the year of incorporation, and first used in the sale or advertising of services and services rendered in commerce among the several States which may lawfully be regulated by Congress on or about the year 1904. Applicant maintains control of the use of the mark by its subordinate organizations and its affiliated companies and related organizations, such control being in respect to the nature and quality of the services in connection with which the mark is used.

The mark is claimed to have become distinctive of applicant's services in commerce which may lawfully be regulated by Congress through substantially exclusive and continuous use thereof as a service mark by applicant in commerce among the several States for the five years next preceding the date of the filing of this application and proof of such distinctiveness under section 2(f) of the act is supplemented by further evidence submitted in this case.

FARMERS EDUCATIONAL AND CO-OPERATIVE UNION OF AMERICA,
By TONY T. DECHANT,
Secretary-Treasurer

EXHIBIT I-3.

Exhibit I-3, the registration on the Principal Register of the United States Patent Office of plaintiff's collective mark, "Union Farmer," is as follows:

No. 597,624

(Seal)

THE UNITED STATES OF AMERICA

To All To Whom These Presents Shall Come:

This is to certify that by the records of the United States Patent Office it appears that Farmers Educational and Cooperative Union of America, of Denver, Colorado, a corporation of Texas, did, on the 25th day of May, 1953, duly file in said Office an application for Registration of a certain COLLECTIVE MARK shown in the Drawing for the GOODS specified in the Statement, a copy of which Drawing and pertinent data from the Statement are hereby annexed and made a part hereof, and duly comply with the requirements of the law in such case made and provided, and with the regulations prescribed by the Commissioner of Patents.

And, upon due examination, it appearing that the said applicant is entitled to have said Mark registered under the Trade-Mark Act of 1946, the said Mark has been duly registered this day in the United States Patent Office on the

PRINCIPAL REGISTER

to Farmers Educational and Cooperative Union of America, its successors or assigns.

This certificate shall remain in force for Twenty Years unless sooner terminated as provided by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this second day of November, in the year of our Lord one thousand nine hundred and fifty-four.

and of the independence of the United States the one hundred seventy-ninth.

/s/ Robert C. Watson
Commissioner of Patents

(Seal)

Attest: Karl H. Axline
Attesting Officer

UNITED STATES PATENT OFFICE

597,624

Registered Nov. 2, 1954

PRINCIPAL REGISTER

Collective Mark

(Goods)

Ser. No. 647,607, filed May 25, 1953

UNION FARMER

Farmers Educational and Cooperative Union of America (Texas corporation) 1555 Sherman St. Denver, Colo.

For: NEWSPAPERS PUBLISHED BY APPLICANT AND ITS DIVISIONAL ORGANIZATIONS, in CLASS 38.

First used on or about 1911, and in commerce on or about 1911.

EXTRACTS FROM EXHIBIT 1.

At pages 1 and 2 of Exhibit 1, paragraph 1 of the Complaint in the injunction case is set out as follows:

1. The plaintiff, Farmers' Educational and Co-Operative Union of America, is a non-profit corporation, organized and incorporated under the laws of the State of Texas

in 1902 and continuously since then and at the present time in good standing as such. Plaintiff is authorized to do and is doing business in Iowa as a non-profit foreign corporation and has been so authorized in Iowa from time to time since 1917. Among the purposes for which plaintiff was incorporated and which it seeks to accomplish through its activities in Iowa and in various States of the Union, as expressed in its Articles of Incorporation, Constitution and By-Laws, are: to educate the agricultural classes in scientific farming; to teach the farmers the classification of crops, domestic economy and the process of marketing; to systematize methods of production and distribution; to eliminate gambling in farm products by Boards of Trade, Cotton Exchanges and other speculators; to bring farming up to the standard of other industries and business enterprises; to secure and maintain profitable and uniform prices of cotton, grain, livestock and other products of the farm; to discourage the credit and mortgage system; to assist its members in buying and selling; to strive for harmony and good will among all mankind and brotherly love among its members; to foster and encourage business operations, on the co-operative plan, in the distribution as well as the productive field.

At page 19 of Exhibit 1, Paragraph 2 of said complaint, as amended, is set out as follows:

2. The defendant, Farmers Educational and Co-Operative Union of America, Iowa Division, was originally an unincorporated association, having its situs in the State of Iowa with its principal offices in Des Moines, Iowa, which association was on October 8, 1917, duly issued a charter by plaintiff, pursuant to its Articles of Incorporation, Constitution and By-Laws, whereby it became an integral part of plaintiff in the State of Iowa, and it continued to be such until December, 1924, when said unincorporated association became a corporation, incorporated not for pecuniary profit pursuant to the provisions of Chapter 394 of the Iowa Codes of 1924 to 1939, now Chapter 504, Code of Iowa, 1954, and thereafter said corpora-

tion continued to be an integral part of the plaintiff in the State of Iowa until March 13, 1954, when, pursuant to plaintiff's Constitution and By-Laws aforesaid, the plaintiff's Board of Directors duly revoked said defendant's charter, which action by said Board of Directors was duly ratified, approved and confirmed by plaintiff's Biennial Convention on March 15, 1954. Since said time, said defendant has had no authority whatever to operate or function as an integral part of plaintiff but, notwithstanding said fact, said defendant continues to falsely misrepresent that it is an integral part of plaintiff and illegally makes use of plaintiff's trade names, trade marks and symbols (hereinafter referred to), in such manner as to constitute unfair competition and infringement of registered trade names, trade marks and symbols of plaintiff, and threatens to continue to do so in the future. The defendants, Fred W. Stover, Lee Harthan, Betty Lownes, Elmer Gustafson, LeRoy Martin, Annis Thorson, Paul Roth, Dean Huff, Emil Ronfeldt, Lester Muhlenbruch and Gustav Mohr, are members, officers and directors of said defendant corporation, are all residents and citizens of the State of Iowa, are the parties primarily responsible for said false and fraudulent misrepresentations and unfair competition and infringements by said defendants.

At page 20 of Exhibit 1, Paragraph 4 of said complaint, as amended, is set out as follows:

4. The defendant, Iowa Union Farmer Association is a corporation not for pecuniary profit, organized under Chapter 504, Code of Iowa, 1954, having its principal place of business as such in the State of Iowa with headquarters at Des Moines, Iowa. It was organized by the defendant which is referred to in Paragraph 2, supra, to carry out a cooperative agreement for the publication of a monthly newspaper called the Iowa Union Farmer for all of the members of the two defendants. Since March 15, 1954, said defendant has continued to publish said monthly newspaper and threatens to continue to do so. The publication of said newsaper is conducted in such a manner as

to falsely and fraudulently misrepresent that there is a legal connection between said defendant and the plaintiff, when none exists, and constitutes unfair competition and infringements of plaintiff's trade names, trade marks and symbols. The defendants, Fred W. Stover, Chas. Shearn and George Wharam are members and officers of said defendant and are the parties primarily responsible for said false and fraudulent misrepresentations and unfair competition and infringements by said defendant.

At pages 4 and 5 of Exhibit 1, Paragraph 5 of said complaint is set out as follows:

5. The value of the good will, property and rights of plaintiff which plaintiff seeks to protect from the unfair competition and illegal infringements of defendants herein is far in excess of the sum of Three Thousand Dollars ($3,000.00). The jurisdiction of this Court herein is conferred by Section 1332, Title 28, U.S.C.A., by reason of the fact that there is diversity of citizenship between the parties and the amount in controversy exceeds the sum of $3,000.00, exclusive of interest and costs. Jurisdiction of this Court herein is also conferred by Section 1121, Title 15, U.S.C.A., by reason of the fact that defendants' infringements of plaintiff's registered trade names, trade marks and symbols constitute violations of Section 1114, Title 15, U.S.C.A. Jurisdiction of this Court herein is also conferred by Section 1338, Title 28, U.S.C.A., by reason of the fact that plaintiff's claim for unfair competition is joined with a substantial and related claim under the copyright and trade mark laws.

At page 6 of Exhibit 1, Paragraph 8 of said complaint is set out as follows:

8. On or about August 20, 1947, plaintiff duly filed in the United States Patent Office its application for registration of a certain service mark, to-wit: "Farmers Union"

for services comprising the dissemination of information pertaining to farming and related industries, and particularly information in connection with cooperatives to aid the farmer in marketing his produce, information relating to educational and entertaining programs, for farmers and their families, information as to proposed legislation that directly or indirectly may affect those engaged in farming and related industries, and services to and for the farmer relating to storage of produce, the making of mortgage loans, the brokerage of produce and livestock, and the servicing of farm equipment, and at the time of the filing of said application and at all times mentioned in this complaint, plaintiff was the owner of, and now is the owner of said service mark. On or about April 1, 1952, all of the requirements of the then existing statutes of the United States and rules of practice of the United States Patent Office having been complied with, a certificate of registration of said service mark upon the principal register of said United States Patent Office was duly granted and delivered to plaintiff, under Registration No. 557,013

At page 7 of Exhibit 1, Paragraph 10 of said complaint is set out as follows:

10. On or about May 25, 1953, plaintiff duly filed in the United States Patent Office its application for registration of a certain collective mark, to-wit "Union Farmer", for newspapers published by plaintiff and its divisional, and component organizations, and at the time of the filing of said application, and at all times mentioned in this complaint, plaintiff was the owner of, and now is the owner of said collective mark. On or about November 2, 1954, all of the requirements of the then existing statutes of the United States and rules of practice of the United States Patent Office having been complied with, a certificate of registration of said collective mark upon the principal register of said United States Patent Office was duly granted and delivered to plaintiff, under Registration No. 597,624.

At pages 20 and 21 of Exhibit 1, Paragraph 11 of said complaint, as amended, is set out as follows:

11. The charter which plaintiff granted to the unincorporated association, Farmers Educational and Co-Operative Union of America, Iowa Division, on October 8, 1917, as aforesaid, was similar to the charters issued by plaintiff to its various component unions and conferred upon said association the right to use plaintiff's said name and trade names, trade marks and emblems in soliciting funds and members, in publishing a newspaper, and for indicating to the members of said association and to the general public that said association was a component organization of plaintiff. Said association was in its inception, and the defendant corporation which succeeded to the rights and responsibilities of said unincorporated association and its component organizations and members ever since have remained, subject to the charter, constitution and by-laws of plaintiff, as duly amended from time to time. The defendant corporation, Farmers Educational and Co-Operative Union of America, Iowa Division, and Service Association which was incorporated in December, 1937, as aforesaid, was formed as a component organization and integral part of plaintiff under and by virtue of the charter granted by plaintiff as aforesaid. The defendant, Iowa Union Farmer Association, was likewise organized as a component organization and integral part of plaintiff as aforesaid. The revocation of said charter by plaintiff in March, 1954, as aforesaid, was communicated to defendants, and each of them, on or shortly after March 15, 1954.

At page 8 of Exhibit 1, Paragraph 12 of said complaint is set out as follows:

12. Ever since the revocation of said charter, as aforesaid, the defendants, and each of them, have disregarded the same and have infringed, and continued to use and employ, are now infringing, using and employing, and threaten in the future to infringe, use and employ plaintiff's said names, marks and emblem within the State of Iowa in so-

liciting members and collecting funds from individuals and in making pronouncements upon matters of public attention and concern, all in the name of plaintiff but without authority from plaintiff, and in publishing a newspaper under the name "Iowa Union Farmer", and in disseminating views and policies as the views and policies of plaintiff and its members, and in numerous other ways. The said acts of defendants have deceived, misled and defrauded, and tend to and will in the future, unless prevented, deceive, mislead and defraud inhabitants of the State of Iowa and others.

At pages 9 and 10 of Exhibit 1, it is shown that the prayer of said complaint asked that, upon final hearing on the merits herein, the Court enter a decree permanently enjoining, restraining and preventing the defendants, and each of them, from using, employing, publishing and circulating, in any and every manner whatsoever, in any context and in conjunction with any other words, except in the exercise of the right of free speech and discussion the name of plaintiff or the names and marks, "Farmers Union" and "Union Farmer", or any combination of said names and marks, or the emblem of plaintiff and from soliciting members and membership dues, issuing membership cards, holding meetings and making solicitations or doing any other acts which in any way purport that the defendants, or any of them, are in any way authorized to speak for plaintiff or represent plaintiff or to constitute or act for any component organization or integral part of plaintiff, and that plaintiff have such other and further relief as this Court may deem to be just, equitable and proper, including judgment for its costs.

At page 37 of Exhibit 1, it is shown that the order on the pretrial conference of January 20, 1956, provided as follows:

13. Counsel for the plaintiff have submitted a trial brief.

At page 38 of Exhibit 1, it is shown that said complaint was amended to provide:

Plaintiff states that the trademarks referred to in Paragraphs 8, 9 and 10 hereof are used by the plaintiff in interstate commerce and that the infringement thereof by the defendants has been in interstate commerce.

At pages 40 to 45 of Exhibit 1 is set out Judge Harper's Memorandum Opinion, filed May 26, 1956, and reported in 141 Fed. Supp. 820.

At pages 45 to 51 of Exhibit 1 is set out Judge Harper's findings of fact, conclusions of law and decree, as follows:

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT AND DECREE.

(Filed June 13, 1956.)

Be It Remembered that on the 21st day of February, 1956, this cause came on in its regular order for trial on the merits, the plaintiff appearing by Frederic M. Miller of the firm of Brody, Parker, Miller, Roberts & Thoma of Des Moines, Iowa, and by Charles F. Brannan of Denver, Colorado, its attorneys of record, and the defendants appearing by George Cosson and Clarence Cosson of Des Moines, Iowa, their attorneys of record, and the Court having listened to the testimony and the arguments of counsel and having examined the documents introduced in evidence and the written briefs submitted by counsel and being duly advised in the premises, now, in conformity to the Rules of Civil Procedure, the Court makes its Findings of Fact and Conclusions of Law and enters its Order for Judgment and Decree, as follows:

Findings of Fact.

1. This action was commenced on February 14, 1955, by the plaintiff, Farmers Educational and Cooperative

Union of America, a Texas corporation duly authorized to transact business in the State of Iowa, against the corporate and individual defendants, above named, to enjoin said defendants from infringement of three of plaintiff's trade marks, all of which are registered on the Principal Register of the United States Patent Office, to-wit: (1) a symbol and service mark, consisting of a plow, a rake and a hoe, surrounded by a circle, (2) a collective mark for goods, consisting of the words, "Union Farmer", used for newspapers published by plaintiff and its divisional organizations, and (3) a service mark, consisting of the words, "Farmers Union", used by plaintiff in the sale and advertisement of services.

2. It was stipulated that the Farmers Educational and Cooperative Union of America, Iowa Division, and Service Association, a corporation, is no longer in existence and was not in existence at the time of the commencement of this action, was not served and is not a party to these proceedings. The defendants, Farmers Educational and Cooperative Union of America, Iowa Division, and the Iowa Union Farmer Association, are both Iowa corporations.

3. Jurisdiction is invoked under the Lanham Act.

4. The defendants conceded at the trial that plaintiff is entitled to the exclusive use of its symbol and service mark, consisting of a plow, a rake and a hoe, surrounded by a circle and asserted that they are not using and will not use said symbol and service mark in the future. Defendants admit that they are using the other marks, namely, "Union Farmer" and "Farmers Union", and asserted that they intend to continue to use said marks unless restrained from so doing.

5. The evidence is undisputed that the use by the defendants of the marks, "Union Farmer" and "Farmers Union" is in direct competition with the plaintiff.

6. The plaintiff, a Texas corporation duly authorized to do business in Iowa, has been operating on a national scale since 1906. Its purposes, as stated in its articles of incorporation, include "to protect its members engaged in

the various branches of the farming industries, in their various pursuits, which in promoting and safeguarding their said interests, is partially educational, fraternal, benevolent and cooperative".

7. In furtherance of its purposes aforesaid, plaintiff publishes and distributes a newspaper, various pamphlets and a Washington Newsletter, examples of which were introduced in evidence. Each of them displayed plaintiff's service mark, "Farmers Union" and most of them displayed, in conjunction therewith, plaintiff's symbol, the plow, rake and hoe surrounded by a circle. The plaintiff's newspaper is published under the name of "National Union Farmer" and has displayed therewith the aforesaid symbol. In 18 of the 29 States in which plaintiff has members it has set up State organizations and of these at least nine publish newspapers that use plaintiff's mark, "Union Farmer". The Kansas division of plaintiff has published its "Kansas Union Farmer" continuously since 1911.

8. The defendant, Farmers Educational and Cooperative Union of America, Iowa Division, was originally an unincorporated association located in Iowa, which, in December, 1924, became a corporation pursuant to the laws of Iowa. On October 8, 1917, this defendant was issued a charter by the plaintiff whereby it became an integral part of the plaintiff in the State of Iowa, continuing to be such until 1954. In March, 1954, plaintiff revoked the charter of its Iowa Division and the legality of such revocation was conceded at the trial by the defendants.

9. On September 24, 1955, subsequent to the filing of the complaint herein, this defendant, by amendment to its articles of incorporation, changed its name to Iowa Farmers Union. This new name is identical with the name by which plaintiff's state organizations are commonly, or colloquially, known, and hence is almost identical with the name by which said corporation was commonly, or colloquially, known before the Iowa charter was revoked by plaintiff in 1954.

10. The defendant, Iowa Union Farmer Association, publishes a newspaper under the name of "Iowa Union

Farmer", whose mark resembles those of plaintiff's state organization newspapers. Prior to the revocation of the charter of the defendant corporation by plaintiff, such publication was authorized by the then legally constituted Iowa Farmers Union and it continues to be so authorized by said organization.

11. Plaintiff's service mark, the symbol, with the plow, the rake and the hoe, surrounded by the circle, was registered in the Principal Register of the Patent Office on November 4, 1952; plaintiff's collective mark for goods, "Union Farmer", usually used for newspapers published by plaintiff and its divisional organizations, was registered in the Principal Register of the Patent Office on November 2, 1954; and plaintiff's service mark, "Farmers Union", was registered in the Principal Register of the Patent Office on April 1, 1952.

12. Defendants' activities in Iowa have affected plaintiff's interstate activities as well as in Iowa and defendants' activities have received some national publicity. The use by the defendants of the marks, "Union Farmer" and "Farmers Union" is in direct competition with the plaintiff. The types of service offered and the names used are so similar that there is bound to be confusion. The evidence shows that confusion has occurred and demonstrates that confusion will reoccur. Defendants' activities adversely and seriously affect plaintiff's national organization and its nationwide program.

13. Defendants failed to produce any evidence that plaintiff's trade marks are invalidly registered. The evidence shows that plaintiff's marks have acquired a secondary meaning and the Patent Office did not err in so determining. The evidence of Iowa corporations using the words, "Farmers" and "Union", demonstrates that all of said corporations, some of whom are licensees of the National Farmers Union, disperse goods and services different from plaintiff so that they are not in competition with plaintiff and their existence is no aid to defendants.

14. Defendants' evidence on its asserted issue of "unclean hands" is not clear. It seems to refer to the rev-

ocation of the charter of the Iowa division because the Iowa division did not see eye to eye with the national organization on political matters. Such actions have no intrinsic connection with the subject matter of this litigation having to do with inter-organizational strife whereas the subject matter of the litigation is trade mark infringement.

The Court makes the following

Conclusions of Law.

1. Plaintiff's registration of its three marks aforesaid in the Principal Register of the Patent Offices creates prima facie evidence of the validity of the registration and of plaintiff's exclusive right to use said marks on the goods and services specified in such registrations. Section 1057-(b), Title 15, U.S. Code, expressly so provides. Accordingly the presumption arises therefrom that the statutory prerequisites to valid registration have been met, i. e., (1) Their dissimilarity to other registered marks for similar goods or services, (2) the secondary meaning of said marks, (3) their ownership by plaintiff, and (4) plaintiff's exclusive right to use said marks in commerce in connection with the goods and services specified by plaintiff. See Curtis-Stephens-Embry Co. v. Pro-Tek-Toe Skate Stop Co., 199 F. 2d 407, 413. Defendants have wholly failed to overcome plaintiff's prima facie case herein. Plaintiff's said Registered Marks, to-wit: No. 557,013, No. 566,390 and No. 597-624 are valid, subsisting and legally registered marks.

2. This Court has jurisdiction under the Lanham Act (Sections 1114 and 1121, Title 15, U. S. Code), to enjoin the infringement of plaintiff's said marks by the defendants herein.

3. Defendants are infringing plaintiff's said registered marks in such a manner that confusion has resulted and is bound to reoccur in the future unless injunctive relief, prayed for by the plaintiff, is granted by this Court.

4. Defendants' activities have affected plaintiff's interstate activities as well as plaintiff's activities in Iowa and

defendants' activities have received some national publicity. The use by the defendants of the marks, "Union Farmer" and "Farmers Union" is in direct competition with the plaintiff.

5. Defendants' half hearted issue of "unclean hands" presents a purported defense which the Courts are reluctant to apply and will always scrutinize with a very critical eye. Coca Cola v. Koke, 254 U.S. 143. The actions of plaintiff, of which defendants complain, have no intrinsic connection with the subject matter of this litigation. The contentions of defendants with reference to alleged "unclean hands" are wholly without merit.

6. Plaintiff is entitled to a permanent injunction, enjoining the defendants, both corporate and individual, from the use of plaintiff's service mark, "Farmers Union", plaintiff's collective mark, "Union Farmer", and plaintiff's service mark, the aforesaid symbol of a plow, a rake and a hoe surrounded by a circle. Bulova Watch Co. v. Steele, 194 F. 2d 567, Pure Foods v. Minute Maid Corp., 214 F. 2d 792, and Natl. Tuberculosis Assn. v. Summit County Tuberculosis & Health Assn., 122 F. Supp. 654.

Order for Judgment.

Pursuant to the foregoing,

It is Ordered that the Clerk of this Court enter of record herein the following

Judgment and Decree.

Be It Remembered that on this 11th day of June, 1956, this cause came on for the entry of Judgment and Decree pursuant to the Findings of Fact and Conclusions of Law, filed herein this date, which Findings of Fact and Conclusions of Law are incorporated herein by reference as fully as though repeated at length herein, and, in accordance therewith

It Is Hereby Ordered, Adjudged and Decreed that the defendants, Iowa Farmers Union (formerly Farmers Educational and Cooperative Union of America, Iowa Divi-

sion), Iowa Union Farmer Association, Fred W. Stover, Charles Shearn, George Wharam, Betty Lownes, Lee Harthan, Elmer Gustafson, LeRoy Martin, George Rose, Gustav Mohr, Lester Muhlenbruch, Emil Ronfeldt, Annis Thorson and Lynn Potter, and each of them, be and they are permanently enjoined from making any use whatever, directly or indirectly, of plaintiff's collective mark, "Union Farmer", in connection with the printing, publication and distribution of any newspaper or like periodical, and from making any use whatever, either directly or indirectly, of plaintiff's service marks to-wit: the words, "Farmers Union", and the symbol, consisting of a plow, a rake and a hoe surrounded by a circle, in connection with the dissemination of information pertaining to farming and related industries, and particularly information in connection with cooperatives to aid the farmer in marketing his produce, information relating to educational and entertainment programs, for farmers and their families, information as to proposed legislation that directly or indirectly may affect those engaged in farming and related industries, and services to and for the farmer relating to storage of produce, the making of mortgage loans, the brokerage of produce and livestock, the sale of insurance, and the servicing of farm equipment, and from in any way, directly or indirectly attempting to compete with the plaintiff in its use of said trade marks.

It Is Further Ordered that Judgment be entered against the said defendants for the costs of this action.

/s/ Roy W. Harper,
Judge by Assignment.

At page 53 of Exhibit 1, it is shown that counsel stipulated as follows:

Mr. Miller: As I understand it from counsel, it is conceded that the Charter of the Iowa Division of this plaintiff was revoked at the 1954 convention in Denver, Colorado.

Mr. Clarence Cosson: That is correct.

At pages 53 and 54 of Exhibit 1, it is shown that Tony T. DeChant, Secretary-Treasurer for plaintiff, testified in part as follows:

The name of plaintiff is Farmers' Educational and Cooperative Union of America. It is commonly known as Farmers' Union or National Farmers' Union. There are 3 generally known national farm organizations. They are the Farm Bureau, the National Grange, and the Farmers' Union. The legal name of the National Grange is Patrons of Husbandry; they're not commonly known as the Patrons of Husbandry, they're commonly known as the Grange or the National Grange. The legal name of the Farm Bureau is the American Farm Bureau Federation; they're not usually known by that name, they're usually known as the Farm Bureau. According to the Articles of Incorporation and the Constitution and Bylaws of the plaintiff, it has authority to issue charters to subordinate unions, such as local unions, county unions, and state unions. The name of the Iowa Division when it was a subordinate division to the National Farmers' Union was the Farmers' Educational and Cooperative Union of America, Iowa Division. It was not commonly known by that name. It was commonly known as the Farmers' Union in Iowa or the Iowa Farmers' Union. That is true of the other divisions of the Farmers' Union. There are 17 chartered subdivisions. I know the membership of those divisions. The National Farmers' Union publishes a monthly newspaper. Exhibit "M" is the November, 1955, issue of the "National Union Farmer." That is the name of a newspaper. The chartered subdivisions of the National Farmers' Union as of December 31, 1955, with membership, are Arkansas, 14,109, Illinois, 4,240, Indiana, 5,754, Kansas 10,209, Michigan 3,392, Minnesota, 35,011, Montana 14,683, Nebraska, 16,150, North Dakota, 42,666, Oklahoma, 50,010, Oregon, 2,397, Rocky Mountain, consisting of Colorado and Wyoming, 18,089, South Dakota, 18,960, Texas, 4,252, Utah, 2,092, Virginia, 6,273, Wisconsin, 11,974.

We have members in other states where we do not have a division. We have memberships in Alabama, Idaho, Iowa, Kentucky, New Mexico, North Carolina, Ohio, Pennsyl-

vania, Tennessee, and Washington. There are a few on a membership-at-large basis in Washington, D. C. In 1955, we had 273,082 farm families representing this membership. That would make a voting membership of 600,000 members.

We had 1,193 members in Iowa in 1951, 1,491 in 1952, 1,311 in 1953. In 1954 the Iowa Division was revoked. In 1954 there were 153 members. In 1955, 366, and in 1956, 525 to date. We received $493.50 from the membership of Iowa in 1954. The receipts from Iowa in 1955 were $3,116.00. The receipts to date in 1956 are $4,726.50. Our expenses in Iowa for 1954 were $1,427.18 and in 1955 our expenses were $9,474.78. We have projected a budget for 1956 of approximately $25,000.00 for Iowa.

At pages 56 and 57 of Exhibit 1, it is shown that DeChant testified further as follows:

The division in Arkansas publishes a newspaper named "Arkansas Union Farmer"; the Illinois Division, the "Illinois Union Farmer"; the Kansas Division publishes a newspaper. The name of it is "Kansas Union Farmer"; the Indiana Division publishes "Indiana Farmers' Union News." The Rocky Mountain Division, composed of Colorado and Wyoming, publish a newspaper named "Rocky Mountain Union Farmer." The Oregon Division publishes a newspaper named "Oregon Union Farmer." Our division in Montana publishes a newspaper named "Montana Farmers' Union News." The North Dakota Division publishes "North Dakota Union Farmer." The division in South Dakota publishes "South Dakota Union Farmer." The Nebraska Division publishes "Nebraska Union Farmer." The division in Minnesota publishes a newspaper and the name of it is the "Minnesota Edition of the Farmers' Union Herald."

The Oklahoma Division publishes the "Oklahoma Union Farmer." The Wisconsin Division publishes "Wisconsin Farmers' Union News." The Virginia Division publishes "Virginia Union Farmer."

Prior to 1954, while the Iowa Division was in good standing, it published a newspaper. The name of it was the "Iowa Union Farmer." The defendants are continuing to publish a newspaper since 1954. Exhibit "S" is the January, 1955, issue of "Iowa Union Farmer." It was mailed to the National Farmers' Union, Denver, Colorado.

Mr. Miller: I understand that the circulation of "Iowa Union Farmer" goes outside the State of Iowa, is that right, Mr. Cosson?

Mr. Clarence Cosson: That is correct.

At pages 60 and 61 of Exhibit 1, it is shown that Lynn Potter testified in part as follows:

I was in attendance at the meeting in the Burr Oak Hall. I don't remember the exact name of the lodge. * * * Mr. Stover was present at that meeting. He is now President of the Organization that calls itself the Iowa Farmers' Union. He spoke for a few moments. He was advised to say a few words, and he did. * * * Q. What statements did he make? A. "Membership in the Iowa Farmers' Union does not just mean that you belong to the Farmers' Union, but that the Farmers' Union belongs to you." Referring, of course, to the Iowa Farmers' Union. "It will become what you as members make it."

At page 64 of Exhibit 1, it is shown that James G. Patton testified in part as follows:

I was President of the plaintiff, National Farmers' Union, at the time the charter of the Iowa Division was revoked. The National Farmers' Union began in November, 1955, to put on a campaign to restore its membership in the State of Iowa. On November 22, a meeting of some 300 people was held in Des Moines. There were 2 or 3 speeches made at the meeting. Following the meeting, I was told that it was a meeting of a number of people who constituted themselves as an organization committee. A

state director of organization for the National Farmers' Union was employed, by the name of Mr. Maurice O'Reilly.

At pages 66 to 68 of Exhibit 1, it is shown that Maurice O'Reilly testified in part as follows:

As director of organization in Iowa, I have contacted a number of farmers in Iowa to secure their assistance in this membership work. * * * Q. What did you encounter? A. Often times, in quite a number of cases where I would be recruiting people to help us on our membership drive, they would say that they didn't want to join any Farmers' Union until it was determined which—that there was only one Farmers' Union. In other words, there was another Farmers' Union, and what about that? Was I working for the old Farmers' Union group that had been—whose charter had been revoked, or what kind of a Farmers' Union was it that we were trying to organize? * * *

I found people who thought that the defendant was still part of the National organization several times. I can give names of people who were under that misapprehension. One in particular, one Albert Wolf of Lyon County and I do not know the name of the town that he lives in or what his post office address is. I talked to Mr. Wolf about 3 weeks ago. If Mr. Wolf knew of the differences that had arisen between the defendant and the plaintiff, he didn't tell me that he knew of them. He came to me after a public meeting and told me, he said, "It looks like I have joined the wrong Farmers' Union. I have already joined one." I don't know whether Mr. Wolf's son was with him. I do not know what his first name was, but I visited, more or less of a concurrent visit with them. I did not tell you how many there were that I had come across who were under this misapprehension. I said several. I would say easily that I have talked to 25 or 30. Most of the people I talked to are people whom I am trying to get to help us, but not actually soliciting membership. I would easily say that there have been that many who have brought it up, who have asked questions that indicated

that they did not know which was which, I mean whether that old group was still affiliated with the National organization or not. Some of them did know that there were 2 organizations and some of them didn't. Some of them did not distinguish between the 2. * * * The other competition is not worrying us as much as the fact that we have 2 organizations seeking membership who carry the same name.

At page 85 of Exhibit 1, it is shown that Fred W. Stover, appellant herein, testified in part as follows:

In March, 1954, when the charter of the Iowa Division of the National Farmers' Union was cancelled and revoked, I was then President of the Iowa Division. I was also President of the Iowa Union Farmer Association at that time, and I have continued to be President of the group now called the Iowa Farmers' Union, continuously since then and I have continued to be President of the Iowa Union Farmer Association. I have continued to publish the newspaper "Iowa Union Farmer" the same as I did when I was President of the Iowa Division of the National Farmers' Union. We don't contend that the Iowa Farmers' Union is affiliated with the National Farmers' Union. Otherwise, I guess our contacts with our members are the same as before. We are now engaged in a campaign to increase that membership. We continued to work to increase the membership since March 1, '54. The Iowa Division, of which I am the President, was known as the Iowa Farmers' Union before 1954. It was often referred to as such. The other defendants in this case have continued to act as officers and directors of various corporations since 1954. Except for the fact that we no longer have any contact with the National Farmers' Union, the business of both groups has been substantially the same at all times since 1954

At page 94 of Exhibit 1, notice of appeal is set forth as follows:

NOTICE OF APPEAL.

(Filed July 11, 1956.)

Notice is hereby given that the defendant corporation heretofore known and referred to in this case as Iowa Farmers Union (formerly Farmers Educational and Cooperative Union of America, Iowa Division), and the defendant corporation heretofore known and referred to in this case as Iowa Union Farmer Association, and the individual defendants, Fred W. Stover, Charles Shearn, George Wharam, Betty Lownes, Lee Harthan, Elmer Gustafson, LeRoy Martin, George Rose, Gustave Mohr, Lester Muhlenbruch, Emil Ronfeldt, Annis Thorson and Lynn Potter and each of them hereby appeal to the Court of Appeals, Eighth Circuit, from the findings, conclusion, judgment and decree of the District Court entered herein on June 13, 1956.

EXTRACT FROM EXHIBIT B.

Appellant's Exhibit B herein is a typewritten brief, filed by appellee with the trial court in the injunction case. (R. 36) Page 25 thereof is as follows:

DIVISION II

PLAINTIFF IS ENTITLED TO THE INJUNCTION HEREIN SOUGHT UNDER THE COMMON LAW PRINCIPLES RELATING TO UNFAIR COMPETITION.

Authorities.

See Points and Authorities in Division IV, at pages 28 to 30 of Plaintiff's original Memorandum for Trial Brief heretofore submitted herein.

Argument.

In addition to plaintiff being entitled to the injunction herein sought by reason of the provisions of the Lanham

Act, as pointed out in Division I hereof, supra, plaintiff is also entitled to such injunctive relief under the Common Law Principles relating to Unfair Competition. However, since this proposition is fully covered by Division IV of Plaintiff's original Memorandum for Trial Brief, at pages 28 to 48 thereof, we will not repeat herein what is there set forth, but merely incorporate the same herein by reference as fully as though it were repeated at length herein. It is respectfully submitted that, by reason of the matters there set forth, the evidence clearly demonstrates that the amount in controversy herein exceeds $3,000, there is diversity of citizenship, and, under common law principles relating to unfair competition, this Court has jurisdiction, pursuant to the provisions of Sections 1332 and 1338, Title 28, U.S.C.A., to grant the plaintiff herein the injunctive relief sought by it and that the evidence abundantly warrants and requires the granting of such relief by this Court.

EXTRACT FROM EXHIBIT 2

At page 2 of Exhibit 2 appears the following statement by appellant:

> Here is an explanation of what happened. Shortly after the suit was started, the lawyers met for a pre-trial conference with Judge Wm. Riley, who is the judge for the U.S. Southern District of Iowa. Our attorneys agreed not to use the trade marks and symbols, not to use the name Farmers Educational and Cooperative Union of America, Iowa Division, and not to claim that we represent the N.F.U. Thereupon Judge Riley commented that if that were done there probably wouldn't be any trial, it would be a moot case. This apparently did not satisfy the N.F.U. officials, who quite obviously wanted us put clear out of business. But there the whole thing hung until February of this year, when the case was finally docketed. Unfortunately, at that time Judge Riley was ill in the hospital. Judge Roy Harper of Missouri, a Truman appointee and a friend of Charlie

Brannan was assigned to hear the case. He knew nothing about the case before—about the pre-trial conference and the discussions that had been held before Judge Riley. It seems that he paid no attention to our answer, our briefs and arguments or testimony. His excuse seemed to be that we had conceded the legality of the charter revocation, and therefore all the long record of N.F.U. interference in I.F.U. affairs had no bearing.

EXTRACTS FROM EXHIBIT 5.

At page 4 of Exhibit 5 appears the following statement by appellant:

Some farmers still have doubts about the I.F.U. being able to survive Patton's raids and injunctions and some subscribers to U.S.F.U. News have the same doubts about the paper being able to continue. Since some farmers may hesitate to join an organization that is due for extinction and F.U. Members outside of Iowa may not be interested in advancing subscriptions to a paper that is about to fold up, the following is submitted to reassure one and all.

"The Fraternal organization, now past 40, is not going to fold up in spite of all of the injunction suits that Patton and his Chore boys in Iowa are using to harass and retard the Organization.

"The Iowa Union Farmers Association is now in better position than it has ever been.

"The paper will continue. Patton can't stop it."

At page 7 of said Exhibit 5, it is stated:

Iowa Farmers Union Receives Educational Funds.

The Iowa Farmers Union has received Educational Funds during 1956 from the following Farmers Union Cooperatives.

The Farmers Union Live Stock Commission, Omaha, $18.86.

The Farmers Union Live Stock Commission, Sioux City, $139.29.

The Farmers Union Live Stock Commission, Sioux Falls, $1,342.18.

Farmers Union Marketing Association, St. Paul, $31.33.

Farmers Union Grain Terminal Association, $731.42.

The Great Plains Supply Co. (GTA), $2,628.36.

CORRECTIONS AND ADDITIONS TO APPELLANT'S RECORD HEREIN.

There are a number of typographical errors in appellant's record.

The word "we" in the third line of the quoted portion of Paragraph 3 on page 2 of the Record should be "he" and the word "excuses" in the seventh line of said quoted paragraph should be "excuse".

The figures "1947" in the third line of the second paragraph of the Order on page 5 of the Record should be "1957" and there should be inserted after the word "should" in the fourth line of said paragraph the word "not".

The word "Monday" in the thirteenth line of the first full paragraph at page 38 of the Record should be changed to "Wednesday".

The words and figures "June 15, 1956" in the twelfth line of the seventh paragraph at page 41 of the Record should be changed to "June 13, 1956".

The words "set of papers" in the first line of the second paragraph of page 48 of the record should be changed to "sheet of paper".

The figures "257" in the fifth line of the fourth full paragraph on page 63 of the Record should be changed to "237".

The following testimony of the appellant Stover should be inserted following the seventh line from the bottom of page 54 of the Record, to-wit: .

MR. MILLER: Your honor, just to save time, could I make this man my witness for a couple of questions?

THE COURT: Yes. You have a right to do that.

Q. (By Mr. Miller on Direct). On page 7 of the copy of this paper which is marked Exhibit 5 is the report of receipts for educational funds, is it not? A. Yes.

Q. And during the noon hour you investigated the record and ascertained that those funds had been received by the Iowa Farmers Union since the decree was entered, is that not true?

MR. McMANUS: Now, just a minute. Now this line of examination is objected to for the reason that it is incompetent, immaterial, and irrelevant to any issue involved in this proceedings, and an attempt to investigate a collateral matter not involved in the contempt charge, and this matter of the collection of funds is a matter which should have been litigated in the prior trial of this case, and has no place in this proceeding. And it is objected to as incompetent, immaterial and irrelevant.

MR. MILLER: Well, it already—

THE COURT: I don't perceive where—however, for impeachment purposes—is that the offer?

MR. MILLER: No, it is plead in the citation, your honor, in the last paragraph. It is plead.

THE COURT: To shorten it up, I will just receive it subject to the objection, and I can rule on it.

MR. MILLER: Will you read the question to him.

(The pending question was read back to the witness as follows: "Q. And during the noon hour you investigated the record and ascertained that those funds had been received by the Iowa Farmers Union since the decree was entered, is that not true?") A. Yes.

Q. And those funds were collected in the name of Iowa Farmers Union?

MR. McMANUS: Now just a minute. Same objection.

THE COURT: I will receive it subject to the objection.

A. You use the word "collection". They sent them to us. And we received them and we cashed the checks.

Q. Well, I call your attention to Exhibit 7 and ask you to state if that is not a request for the payment of some of them?

MR. McMANUS: That is objected to for the reason--

A. (Interposing) No, it is not.

MR. McMANUS: Just a minute.

Q. Well, it refers to this $122 down here, doesn't it?

A. No, it does not.

Q. I call your attention to Exhibit 7 and ask you to state whether or not that is your signature on the exhibit? A. It is.

Q. And you mailed that to Mr. Wells, did you not? A. That's right.

Q. And I call your attention to the signature on Exhibit 8 and ask you to state whether or not that is your signature? A. It looks very much like it.

Q. And you mailed that to Mr. Wells, did you not? A. Yes.

Q. Now in regard to subscriptions to your U.S. Farm Union News, I show you this special message, Exhibit 9, which purports to have been sent out by you. Did you send that out? A. Sent one out looked very much like that.

The following testimony of the appellant Stover should be inserted following the fifth line from the top of page 57 of the Record, to-wit:

MR. McMANUS: One more question If I may, your honor. And I want to ask this question without waiving my objections, and I don't believe I do waive them.

Q. But counsel asked you about the receipt of certain funds since June 13th, 1956. Do you know whether or not those funds have been earned and your companies were entitled to them prior to June 13th, 1956, or not? A. I am quite sure that all of such funds were actually due and

earned prior to June 13th, although I think that some of them were received since.

Q. And who did you regard those funds as belonging to?

MR. MILLER: That is objected to—

A. (Interposing) To the members.

MR. MILLER: (Continuing) —as calling for an opinion and conclusion of the witness, and incompetent.

MR. McMANUS: Well, perhaps it is an opinion and conclusion. I don't think it is material anyway.

APPENDIX

(See, also, 247 F 2d 809)

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 15,635

Iowa Farmers Union (Formerly Farmers Educational and Co-operative Union of America, Iowa Division), and Iowa Union Farmers Association, and Fred W. Stover, Charles Shearn, George Wharam, Betty Lownes, Lee Harthan, Elmer Gustafson, LeRoy Martin, George Rose, Gustav Mohr, Lester Muhlenbruch, Emil Ronfeldt, Annis Thorson and Lynn Potter,

Appellants

v.

Farmers' Educational and Co-operative Union of America, A Corporation,

Appellee

Appeal from the United States District Court for the Southern District of Iowa

(August 5, 1957)

James R. McManus, George Cosson and Clarence Cosson were with him on the brief, for Appellants.

Frederic M. Miller, Sherman Morsman and Charles F. Brannan were with him on the brief, for Appellee.

Before WOODROUGH, VOGEL and VAN OOSTERHOUT, Circuit Judges.

WOODROUGH, Circuit Judge.

This action was brought by Farmers' Educational and Cooperative Union of America, a Texas corporation, against Farmers Educational and Cooperative Union of America, Iowa Division, and Service Association, a corporation, and others, to enjoin the defendants from an alleged infringement of three of plaintiff's trade marks, all of which are registered on the Principal Register of the United States Patent Office. The trade marks are, (1) a symbol and service mark, consisting of a plow, rake and hoe, surrounded by a circle, (2) a collective mark for goods, consisting of the words, "Union Farmer", used for newspapers published by plaintiff and its divisional organizations, and (3) a service mark, consisting of the words "Farmers Union", used by plaintiff in the sale and advertisement of services.

On the trial of the case the court held that federal jurisdiction was conferred by the Lanham Act of 1946, 15 U.S.C.A. § 1051 et seq., and rendered judgment for plaintiff in accord with the opinion reported at 141 F. Supp. 820 and findings of fact and conclusions of law which are appended.[1]

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[1] Findings of fact and conclusions of law filed June 13, 1956.

1. This action was commenced on February 14, 1955, by the plaintiff, Farmers Educational and Cooperative Union of America, a Texas Corporation duly authorized to transact business in the State of Iowa, against the corporate and individual defendants, above named, to enjoin said defendants from infringement of three of plaintiff's trade marks, all of which are registered on the Principal Register of the United States Patent Office, to-wit: (1) a symbol and service mark, consisting of a plow, a rake and hoe, surrounded by a circle, (2) a collective mark for goods, consisting of the words, "Union Farmer", used for newspapers published, and (3) a service mark, consisting of the words, "Farmers Union", used by plaintiff in the sale and advertisement of services.

2. It was stipulated that the Farmers Educational and Cooperative Union of America, Iowa Division, and Service Association, a corporation, is no longer in existence and was not in existence at the time of the commencement of this action, was

not served and is not a party to these proceedings. The defendants, Farmers Educational and Cooperative Union of America, Iowa Division, and the Iowa Union Farmer Association, are both Iowa Corporations.

3. Jurisdiction is invoked under the Lanham Act.

4. The defendants conceded at the trial that plaintiff is entitled to the exclusive use of its symbol and service mark, consisting of a plow, a rake and hoe, surrounded by a circle and asserted that they are not using and will not use said symbol and service mark in the future. Defendants admit that they are using the other marks, namely, "Union Farmer" and "Farmers Union" and asserted that they intend to continue to use said marks unless restrained from so doing.

5. The evidence is undisputed that the use by the defendants of the marks, "Union Farmer" and "Farmers Union" is in direct competition with the plaintiff.

6. The plaintiff, a Texas corporation duly authorized to do business in Iowa, has been operating on a national scale since 1906. Its purposes, as stated in its articles of incorporation, include "to protect its members engaged in the various branches of the farming industries, in their various pursuits, which in promoting and safeguarding their interests, is partially educational, fraternal, benevolent, and cooperative."

7. In furtherance of its purposes aforesaid, plaintiff publishes and distributes a newspaper, various pamphlets and a Washington newsletter, examples of which were introduced in evidence. Each of them displayed plaintiff's service mark, "Farmers Union" and most of them displayed, in conjunction therewith, plaintiff's symbol, the plow, rake and hoe surrounded by a circle. The plaintiff's newspaper is published under the name of the "National Union Farmer" and has displayed therewith the aforesaid symbol. In 16 of the 29 States in which plaintiff has members it has set up State organizations and of these at least nine publish newspapers that use plaintiff's mark, "Union Farmer". The Kansas division of plaintiff has published its "Kansas Union Farmer" continuously since 1911.

8. The defendant, Farmers Educational and Cooperative Union of America, Iowa Division, was originally an unincorporated association located in Iowa, which, in December, 1924, became a corporation pursuant to the laws of Iowa. On October 8, 1917, this defendant was issued a charter by the plaintiff whereby it became an integral part of the plaintiff in the State of Iowa, continuing to be such until 1954. In March, 1954, plaintiff revoked the charter of its Iowa Division and the legality of such revocation was conceded at the trial by the defendants.

9. On September 24, 1955, subsequent to the filing of the complaint herein, this defendant, by amendment to its articles of incorporation, changed its name to Iowa Farmers Union. This new name is identical with the name by which plaintiffs state organizations are commonly, or colloquially, known, and hence is almost identical with the name by which said corporation was commonly,

or colloquially, known before the Iowa Charter was revoked by plaintiff in 1954.

10. The defendant, Iowa Union Farmer Association, publishes a newspaper under the name of "Iowa Union Farmer", whose mark resembles those of plaintiff's state organization newspapers. Prior to the revocation of the charter of the defendant corporation by plaintiff, such publication was authorized by the then legally constituted Iowa Farmers Union and it continues to be so authorized by said organization.

11. Plaintiff's service mark, the symbol, with the plow, the rake and the hoe, surrounded by the circle, was registered in the Principal Register of the Patent Office on November 4, 1952; plaintiff's collective mark for goods, "Union Farmer", usually used for newspapers published by plaintiff and its divisional organizations, was registered in the Principal Register of the Patent Office on November 2, 1954; and plaintiff's service mark, "Farmers Union", was registered in the Principal Register of the Patent Office on April 1, 1952.

12. Defendants' activities in Iowa have affected plaintiff's interstate activities as well as in Iowa and defendants' activities have received some national publicity. The use by the defendants of the marks, "Union Farmer" and "Farmers Union" is in direct competition with the plaintiff. The types of service offered and the names used are so similar that there is bound to be confusion. The evidence shows that confusion has occurred and demonstrates that confusion will reoccur. Defendant's activities adversely and seriously affect plaintiff's national organization and its nation-wide program.

13. Defendants failed to produce any evidence that plaintiff's trade marks are invalidly registered. The evidence shows that plaintiff's marks have acquired a secondary meaning and the Patent Office did not err in so determining. The evidence of Iowa corporations using the words, "Farmers" and "Union", demonstrates that all of said corporations, some of whom are licensees of the National Farmers Union, dispense goods and services different from plaintiff so that they are not, in competition with plaintiff and their existence is no aid to defendants.

14. Defendants' evidence on its asserted issue of "unclean hands" is not clear. It seems to refer to the revocation of the charter of the Iowa division because the Iowa division did not see eye to eye with the national organization on political matters. Such actions have no intrinsic connection with the subject matter of this litigation having to do with inter-organizational strife whereas the subject matter of the litigation is trade mark infringement.

The Court makes the following

Conclusions of Law

1. Plaintiff's registration of its three marks aforesaid in the Principal Register of the Patent Office creates prima facie evi-

The injunction ordered is also appended.[2]

It appears from the record that there are three old and generally well known farmers organizations in the United States, namely, the "Farm Bureau", "The National Grange"

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dence of the validity of the registration and of plaintiff's exclusive right to use said marks on the goods and services specified in such registrations. Section 1057(b), Title 15, U.S. Code, expressly so provides. Accordingly the presumption arises therefrom that the statutory prerequisites to valid registration have been met, i.e. (1) Their dissimilarity to other registered marks for similar goods or services, (2) the secondary meaning of said marks, (3) their ownership by plaintiff, and (4) plaintiff's exclusive right to use said marks in commerce in connection with the goods and services specified by plaintiff. See *Curtis-Stephens-Embry Co.* v. *Pro-Tek-Toe Skate Stop Co.*, 199 F.2d 407, 413. Defendants have wholly failed to overcome plaintiff's prima facie case herein. Plaintiff's said Registered Marks, to-wit: No. 557,013, No. 556,390, and No. 597,624, are valid, subsisting and legally registered marks.

2. The Court has jurisdiction under the Lanham Act (Sections 1114 and 1121, Title 15, U.S. Code), to enjoin the infringement of plaintiff's said marks by the defendants herein.

3. Defendants are infringing plaintiff's said registered marks in such a manner that confusion has resulted and is bound to reoccur in the future unless injunctive relief, prayed for by the plaintiff, is granted by this Court.

4. Defendants' activities have affected plaintiff's interstate activities as well as plaintiff's activities in Iowa and defendants' activities have received some national publicity. The use by the defendants of the marks "Union Farmer" and "Farmers Union" is in direct competition with the plaintiff.

5. Defendants' half hearted issue of "unclean hands" presents a purported defense which the Courts are reluctant to apply and will always scrutinize with a very critical eye. *Coca Cola* v. *Koke*, 254 U.S. 143. The actions of plaintiff, of which defendants complain, have no intrinsic connection with the subject matter of this litigation. The contentions of defendants with reference to alleged "unclean hands" are wholly without merit.

6. Plaintiff is entitled to a permanent injunction, enjoining the defendants, both corporate and individual, from the use of plaintiff's service mark, "Farmers Union", plaintiff's collective mark, "Union Farmer", and plaintiff's service mark, the aforesaid symbol of a plow, a rake and a hoe surrounded by a circle. *Bulova Watch Co.* v. *Steele*, 194 F.2d 567, *Pure Foods* v. *Minute Maid Corp.*, 214 F.2d 792, and *Natl. Tuberculosis Assn.* v. *Summit County Tuberculosis & Health Assn.*, 122 F. Supp. 654.

[2] Judgment and Decree.

It is hereby Ordered, Adjudicated and Decreed that the defendants, Iowa Farmers Union (formerly Farmers Educational and

and the "Farmers Union" which have endured a long time more or less in the public eye and the plaintiff in this action is the last named, to-wit: "Farmers Union." Its general plan is and has always been to have local unions formed which are federated with county units and these with a state organization and when there has been due compliance with its requirements, it issues a charter to the state organization, and in that way every individual member of a local union becomes a member of the national Farmers Union and entitled to share in its many and varied activities and advantages. Since 1906 the national organization has actively sought and enlisted members, organized farmer cooperatives, published numerous books and pamphlets and a weekly newspaper named "National Union Farmer". Many of its component unions under the authority of their respective charters have for many years published newspapers with "Union Farmer" as part of the name completed with the name of the state or locality.

Plaintiff's function in connection with its 18 state divisions and in the 29 states in which it has members is to

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Cooperative Union of America, Iowa Division), Iowa Union Farmer Association, Fred W. Stover, Charles Shearn, George Wharam, Betty Lownes, Lee Harthan, Elmer Gustafson, LeRoy Martin, George Rose, Gustav Mohr, Lester Muhlenbruch, Emil Ronfeldt, Annis Thorson and Lynn Potter, and each of them, be and they are permanently enjoined from making any use whatever, directly or indirectly, of plaintiff's collective mark, "Union Farmer", in connection with the printing, publication and distribution of any newspaper or like periodical, and from making any use whatever, either directly or indirectly, of plaintiff's service marks to wit: the words, "Farmers Union", and the symbol, consisting of a plow, a rake and a hoe surrounded by a circle, in connection with the dissemination of information pertaining to farming and related industries, and particularly information in connection with cooperatives to aid the farmer in marketing his produce, information relating to educational and entertainment programs, for farmers and their families, information as to proposed legislation that directly or indirectly may affect those engaged in farming and related industries, and services to and for the farmer relating to storage of produce, the making of mortgages, loans, the brokerage of produce and livestock, the sale of insurance, and the servicing of farm equipment, and from in any way, directly or indirectly attempting to compete with the plaintiff in its use of said trade marks.

It Is Further Ordered that Judgment be entered against the said defendants for the costs of this action.

foster and maintain local and state organizations—and through organization aid in improving conditions of life of the farmers. The various agricultural publications, the weekly newspaper and the Washington news letter are sent to some 375,000 farm families in the United States on a paid subscription basis and the record shows the budget for the weekly newspaper to be in the neighborhood of $70,000 a year. In terms of all publications issued to members bearing the name "Farmers Union" the cost is in excess of one million dollars a year.

The first local Farmers Union in Iowa was chartered on January 25, 1915, and between January 20, 1915, and September 24, 1917, a total of 236 local unions and 8 county unions were chartered in Iowa. The charter of the defendant corporation was granted in 1917, and conferred upon it the right to use the trade marks and name "Iowa Farmers Union" or "Farmers Union in Iowa" in soliciting funds and members and identifying itself and its activities as a component division of the plaintiff. It always availed itself of that right and so held itself out. In March of 1954, its charter was legally revoked by plaintiff as was conceded on the trial and all rights under it were withdrawn.

Notwithstanding the revocation, the individual Iowa defendants and through them, the Iowa organizations have continued to carry on the same activities under the name "Iowa Farmers Union" or "Farmers Union in Iowa" and to use the same trade marks as they did before the revocation. They caused a new Iowa corporation to be organized, bearing the name by which the plaintiff is commonly called and they carried on as before. They admit they have no right to use the registered symbol and service mark consisting of the plow, hoe and rake belonging to plaintiff and will desist from such use, but they admit they are using and will use the plaintiff's registered trade marks, "Union Farmer" and "Farmers Union". They appeal from the decree of injunction rendered against them forbidding them to do so.

Although the court's findings of fact were extended and comprehensive, appellants assert insufficiency of evidence only as to the paragraphs of the findings numbered five, ten, twelve and thirteen.

In paragraph five the court found that defendants' use of the marks "Union Farmer" and "Farmers Union" was in direct competition with the plaintiff and we think the finding is fully supported by the evidence. From 1917 to 1954 defendant Iowa Farmers Union operated under a charter from plaintiff as an integral part of plaintiff as plaintiff's Iowa division. In March, 1954, the charter was lawfully revoked as conceded and since the revocation the individual defendants have operated the corporations the same as before, but without contact with plaintiff. Plaintiff is conducting a campaign to reestablish its Iowa division and replace the disfranchised organization and in direct opposition defendants conduct their campaign for members. Defendants continue to publish the Iowa Union Farmer the same as they did when they were members of the Iowa Division of plaintiff. The plaintiff has operated on a national scale for fifty years. It publishes the newspaper National Union Farmer and has State organizations in 18 of the 29 States in which it has members and at least nine of these publish newspapers using plaintiff's mark "Union Farmer". Defendants in using the name Iowa Farmers Union not only use plaintiff's registered mark "Farmers Union", but also use a name that is identical with the name by which plaintiff's State organizations are commonly known as well as the name by which defendant was known when it belonged to and constituted the Iowa Division of the plaintiff. Obviously the plaintiff and defendants are engaged in the same line of endeavor by the same kind of activities in the same field and defendants use of plaintiff's mark is in direct competition with plaintiff as found by the court.

In paragraph ten of the findings, the court found that defendant Iowa Union Farmer Association publishes a newspaper under the name Iowa Union Farmer, whose mark resembles those of plaintiff's state organization newspapers. Such publication was admitted in defendant's pleading. The name of plaintiff's national newspaper is National Union Farmer. Plaintiff's Kansas Division publishes a newspaper named the "Kansas Union Farmer"; Illinois, the "Illinois Union Farmer", Arkansas, the "Arkansas Union Farmer"; Indiana, the "Indiana Union Farmer", the Rocky

Mountain Division, the "Rocky Mountain Union Farmer"; North Dakota, the "North Dakota Union Farmer"; Nebraska, the "Nebraska Union Farmer"; South Dakota, the "South Dakota Union Farmer"; Oklahoma, the "Oklahoma Union Farmer" and Virginia, the "Virginia Union Farmer."

The court's finding of fact No. 10, that the defendant, Iowa Union Farmer Association, publishes a newspaper under the name of "Iowa Union Farmer", whose mark resembles those of plaintiff's state organization newspapers is supported by and in accord with the evidence.

In paragraph 12 the court found as follows:

> "12. Defendants' activities in Iowa have affected plaintiff's interstate activities as well as in Iowa and defendants' activities have received some national publicity. The use by the defendants of the marks, 'Union Farmer' and 'Farmers Union' is in direct competition with the plaintiff. The types of service offered and the names used are so similar that there is bound to be confusion. The evidence shows that confusion has occurred and demonstrates that confusion will reoccur. Defendants' activities adversely and seriously affect plaintiff's national organization and its nationwide program."

Following the cancellation of the charter of its Iowa Division, the plaintiff employed one Maurice O'Reilley as organizing director for Iowa, who testified for plaintiff on the trial concerning the confusion that exists between the Iowa defendants and the plaintiff National Farmers Union. He said many Iowa farmers said they did not want to join any Farmers Union until it was determined that there was only one, that many have shown they did not know which organization was which and whether or not the old group was still affiliated with the national organization; that some knew there were two organizations and some did not and some did not distinguish between the two. Some attending meetings called by O'Reilley have said that they appear to have joined the wrong union. The defendants are asserting the right to use the plaintiff's registered marks and claiming that the name Farmers Union belongs to the de-

fendant Iowa Farmers Union and not to the plaintiff. The confusion exists and is inevitable and will continue to result. The same types of service are offered by both sides under the names that belong to the plaintiff alone and the defendants infringe in the field of activity for which plaintiff's marks are registered. Defendants' activities in Iowa impede and hinder the re-organization of plaintiff's Iowa division as an integral part of its national organization. The Iowa part is vital and essential as a part of the national organization and defendants' activities there directly and materially affect plaintiff's national operation. Finding No. 12 is substantially supported and in accord with the evidence.

The trial court's finding of fact No. 13 is as follows:

> "13. Defendants failed to produce any evidence that plaintiff's trade marks are invalidly registered. The evidence shows that plaintiff's marks have acquired a secondary meaning and the Patent Office did not err in so determining. The evidence of Iowa corporations using the words, 'Farmers' and 'Union' demonstrates that all of said corporations, some of whom are licensees of the National Farmers Union, dispense goods and services different from plaintiff so that they are not in competition with plaintiff and their existence is no aid to defendants."

The Lanham Act provides that five years use of a mark may be considered as evidence of its having acquired a secondary meaning. The evidence here shows that plaintiff's marks "Farmers Union" has been used by plaintiff in operating on a national scale since 1906 and that plaintiff has used the service mark "Union Farmer" continuously since 1911. The only evidence offered by defendants in respect to the secondary meaning in plaintiff's marks was the stipulation that many corporations in Iowa had Farmers Union in their names, but all of them showed by their corporate names that they were mercantile corporations engaged in activities dissimilar to those of the plaintiff.

This finding and each and all of the findings were in accord with the evidence.

Turning to the conclusions of law.

In its conclusions numbers 3 and 4, the court stated that defendants were infringing plaintiff's registered marks in such a manner that confusion has resulted and is bound to reoccur unless enjoined and that defendants' activities have affected plaintiff's interstate activities and have received some national publicity. That defendants' use of plaintiff's registered marks "Union Farmer" and "Farmers Union" was in direct competition with the plaintiff was reiterated as a conclusion of law.

It being conceded that intra-state activities of the defendants, whose actions have a substantially adverse effect upon interstate commerce, comes within the protection of the Lanham Act, the court's declarations in these conclusions are clearly in accord with the Act. The last paragraph of Section 1127, Title 15, U.S.C.A., provides that the intent of the Lanham Act includes the intent "to protect persons engaged in such commerce against unfair competition." Section 1114, Title 15, U.S.C.A., provides that "any person who shall, in commerce, (a) use, without consent of the registrant any reproduction * * * of any registered mark in connection with the sales * * * or advertising of any goods or services on or in connection with such use is likely to cause confusion or mistake * * * or (b) reproduce * * * any such mark and apply such reproduction * * * in connection with the sale in commerce of such goods or services, shall be liable to a civil action by the registrants for any or all of the remedies hereinafter provided in this chapter * * *." The provisions of said Sections 1127 and 1114 are interpreted in the Commentary, page 268, Title 15, U.S.C.A., as follows:

> "The Supreme Court has held that an activity which is local in its nature may be regulated by Congress if it exercised substantial economic effect on interstate commerce. It is therefore apparent that purely intrastate uses may come under the provisions of the Act if they have a substantial economic effect on interstate, territorial or foreign commerce."

The pronouncement last above quoted has been announced and applied repeatedly by the Federal Courts. The following cases are illustrative:

Bulova Watch Co. v. *Steele*, 5 Cir., 194 F.2d 567;
Pure Foods v. *Minute Maid Corp.*, 5 Cir., 214 F.2d 792;
Stauffer v. *Exley*, 9 Cir., 184 F.2d 962;
Nat. T. B. Assn. v. *Summit Co., etc.*, 122 F. Supp. 654;
Cole of Calif., Inc., v. *Collette of Calif.*, 79 U.S.P.Q. 267;
Time, Inc., v. *Life T. V. Corp.*, 123 F. Supp. 470;
Meades v. *N. Eng. Dup. Co.*, 94 F. Supp. 558;
Admiral Corp. v. *Penco, Inc.*, 108 F. Supp. 1015, aff. 203 F.2d 517.

When the charter of the plaintiff's Iowa division was cancelled the defendants were no longer authorized to use plaintiff's registered marks, but they have used them and admit they intend to continue. At one of his meetings, defendant Stover stated, "Membership in the Iowa Farmers Union does not just mean that you belong to the Farmers Union, but that the Farmers Union belongs to you." He plainly meant his hearers to understand that the name they were using was not the plaintiff's, but belonged to the defendants' organization and that its members belong to the Farmers Union but not to plaintiff. Obviously defendants use the name in direct competition with plaintiff and infringe in the field of activity for which the marks are registered. It is material that defendants were formerly associated with plaintiff and are no longer so associated. The former association makes defendants' infringement and misuse of plaintiff's registered marks much more injurious to plaintiff than if the same wrong were committed by a stranger. The evidence shows clearly that defendants' conduct greatly increases the cost and difficulty plaintiff encounters in its undertaking to reestablish the Iowa division which is essential to its national organization and interstate operation.

The court's conclusion of law No. 1 states that plaintiff's registration of its three marks in the Principal Register of the Patent Office created prima facie evidence of the validity of the registration and of plaintiff's exclusive

right to use said marks on the goods and services specified in the registrations and gave rise to the presumption that prerequisites to valid registration had been met; that defendants had failed to overcome plaintiff's prima facie case and that plaintiff's registered marks, to-wit: No. 557013, No. 566390 and No. 597624, are valid, subsisting and legally registered marks.

It is argued for appellants that the plaintiff's marks "Farmers Union" and "Union Farmer" are merely descriptive and generic terms and are not eligible for registration or exclusive appropriation and that the court erred in enjoining their use.

But the Lanham Act provides for the "registration of a mark which has become distinctive of the applicant's goods in commerce." Section 1052(f), Title 15, U.S.C.A. The subsection further provides: "The Commissioner may accept as prima facie evidence that the mark has become distinctive, as applied to the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years next preceding the date of the filing of the application for its registration."

In 4 Callman "Unfair Competition and Trade Marks," 2124, Section 98.4(a), it is stated:

> "A registrable mark under the Lanham Act must, of course, be capable of distinguishing the goods and services of the trade mark owner. Under the old Act, the acid test of the registrability of the mark was the primary or common meaning and the mark was rejected if it consisted of a name or a descriptive or geographical term, no matter how famous it had become. The new Act, however, permits the registration of marks that have lost such primary meaning and have acquired a secondary significance, so as to symbolize the goods or services of a particular business and distinguish them."

Not only does the Lanham Act provide that a mark which has acquired a secondary meaning can be registered and be entitled to full protection thereunder but it also

contains a provision, which is new, that registration in the Principal Register of the Patent Office is prima facie evidence of valid registration of a mark. Subsection (b), Section 1057, Title 15, U.S.C.A., provides as follows:

> "(b) A certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registration, registrant's ownership of the mark, and of registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein."

Subsection (a), Section 1115, Title 15, U.S.C.A., provides that registration of a mark in the Principal Register of the Patent Office, as provided by said chapter, "shall be prima facie evidence of the registrant's exclusive right to use the registered mark in commerce on the goods or services specified in the certificate, subject to any conditions or limitations stated therein."

In interpreting the statutory provision above quoted, this Court, in the case of *Curtis-Stephens-Embry Co.* v. *Pro-Tek-Toe Skate Stop Co.*, C.C.A. 8, 199 F.2d 407, 413, stated as follows:

> "By subsection (b) of Sec. 7 of the Act of 1946, 15 U.S.C.A., section 1057(b), a certificate of registration of a mark on the principal register is made prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of registrant's exclusive right to use the mark in commerce in connection with the goods specified in the certificate, subject to any conditions and limitations stated therein. Therefore, when a mark is registered upon the principal register under the Act of 1946, the presumption arises that the statutory prerequisites to its valid registration have been met, i.e. (1) its dissimilarity to other registered marks for similar goods, (2) its secondary meaning, (3) its ownership by the applicant, and (4) the applicant's exclusive right to use the trade-mark in commerce in connection with the goods specified."

The above pronouncement has been repeatedly recognized and applied. The following cases are illustrative:

Feil v. *American Serum Co.*, 8 Cir., 16 F.2d 88;

Weiner v. *Nat. Tinsel Mfg. Co.*, 7 Cir., 123 F.2d 96;

Pastifico Spiga, etc., v. *DeMartini*, 2 Cir., 200 F.2d 325;

Rolly, Inc., v. *Younghusband*, 9 Cir., 204 F.2d 209;

Jas. Heddon Sons v. *Millsite Steel & Wire Wks.*, 6 Cir., 128 F.2d 6;

See also Nims, Unfair Competition and Trade Marks, 4th Ed., 1075, 1076.

The evidence herein shows that plaintiff's mark, "Farmers Union," has been used on a nation wide basis continuously since 1906. The only other two national organizations of farmers that have been in existence during that time are the Patrons of Husbandry, which is known as the National Grange, and the American Farm Bureau Federation, which is usually known as the Farm Bureau. The record is undisputed that no organization of farmers, other than the plaintiff and its subordinate organizations, have used the name, "Farmers Union" for the last fifty years. Obviously, the record shows that plaintiff's mark, "Farmers Union" has acquired distinction and a secondary meaning.

In addition to the foregoing, Subsection (b) of Section 1057, Title 15, U.S.C.A., places the burden on the defendants to overcome the presumption arising from the registration of plaintiff's marks in the Principal Register of the Patent Office. This presumption includes the following: (1) the dissimilarity of plaintiff's marks to other registered marks for similar goods or services, (2) the secondary meaning of plaintiff's marks, (3) the ownership of the marks by plaintiff, and (4) plaintiff's exclusive right to use said marks in commerce in connection with the goods and services specified by the plaintiff in such registration. The trial court correctly held that the defendants had wholly failed to overcome this presumption.

We find no error in the court's conclusion of law No. 1.

Appellants also argue that the marks in question "Farmers Union" and "Union Farmer" if validly registered at all are at best weak marks entitled to only limited protection.

but we find no error in the court's conclusion that the doctrine of hierarchy of marks is not applicable in this case. The plaintiff's marks have acquired a secondary meaning during the many years of their exclusive use by the plaintiff in the field of its operation and defendants' infringement of them in the same field is violative of the Act.

Appellants complain of the provision of the judgment which enjoins them "from in any way attempting to compete with plaintiff in its use of said trade marks." They argue that the court rested its jurisdiction on the Lanham Act and that that Act does not confer jurisdiction to protect from unfair competition. We do not sustain the contention.

Section 1127, Title 15, U.S.C.A., in the last paragraph thereof, provides that the intent of Congress, in adopting the Lanham Act, included intention to protect persons engaged in interstate commerce against unfair competition and Section 1114, Title 15, U.S.C.A., provides an adequate remedy to afford such protection.

In the Commentary, Title 15, U.S.C.A., page 269, it is stated:

> "Federal Courts have jurisdiction of all actions arising under the Act, and for the first time their jurisdiction clearly extends to the interstate user of a mark which infringes a mark registered under the Federal Act, as well as to intrastate acts of unfair competition irrespective of the amount in controversy or diversity of citizenship."

In the present case, defendants' infringements are in interstate commerce within the intendment of the Lanham Act and we are in accord with the declaration of the ninth circuit in *Stauffer* v. *Exley*, 184 F.2d 962, 963, 964:

> "The trial court reached the conclusion that the Trade-Mark Act of July 5, 1946, does not confer original jurisdiction upon the district court of the United States in actions for unfair competition in the absence of diversity of citizenship of the parties where there is no substantial and related claim under the copy-

right, patent or Trade-Mark laws joined with such actions. We do not agree."

The Lanham Act of July 5, 1946, 15 U.S.C.A., sections 1051 and 1127 hereinafter referred to as the Act, provides comprehensively for federal registration and protection of trade marks, for protection of trade names and for remedies against unfair competition.

We are satisfied the court had jurisdiction and substantial grounds to protect plaintiff from defendants' unfair competition under the Lanham Act.

We find no error in the proceedings, opinion, findings, conclusions or judgment of the trial court.

Affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 15,635

Iowa Farmers Union (Formerly Farmers Educational and Co-operative Union of America, Iowa Division), and Iowa Union Farmers Association, and Fred W. Stover, Charles Shearn, George Wharam, Betty Lownes, Lee Harthan, Elmer Gustafson, LeRoy Martin, George Rose, Gustav Mohr, Lester Muhlenbruch, Emil Ronfeldt, Annis Thorson and Lynn Potter, Appellants, v. Farmers' Educational and Co-operative Union of America, A Corporation, Appellee.	Appeal from the United States District Court for the Southern District of Iowa.

On Consideration of Petition for Rehearing.

(September 30, 1957.)

Before WOODBROUGH, VOGEL and VAN OOSTERHOUT, Circuit Judges.

WOODBROUGH, Circuit Judge.

In the brief of appellants on their petition for rehearing they contend that this court has held erroneously that the Lanham Act conferred original jurisdiction upon District Courts in actions for unfair competition and they argue that the decision of this court is in conflict with the Second Circuit in *American Auto Association* v. *Spiegel*, 205 F.2d 771, the Third Circuit in *L'Aiglon Apparel* v. *Lana Lobell, Inc.*, 214 F.2d 649 and the Fifth Circuit in *Royal Lace Paper Works, Inc.* v. *Pest-Guard Products, Inc.*, 240 F.2d 814.

To avoid possibility of such construction of our opinion, it is ordered that the paragraphs of the slip opinion herein of August 5, 1957, on page 18 thereof, beginning on the sixth line, be deleted and that the following be inserted in lieu of the deleted matter:

Our holding in this case that the District Court had jurisdiction of the case under the Lanham Act and Title 28, United States Code, Sec. 1338 (a) and (b), is based upon the fact that the unfair competition engaged in by the defendants as rightly found by the District Court, was substantially related to the proven infringement by defendants of the plaintiff's trademarks, which were duly registered under the Lanham Act.

Our decision is in accord with those of the Second, Third and Fifth Circuits in *American Auto Association* v. *Spiegel* (2 Cir.) 205 F.2d 771, *L'Aiglon Apparel* v. *Lana Lobell, Inc.*, (3 Cir.) 214 F.2d 649, and *Royal Lace Paper Works, Inc.* v. *Pest-Guard Products*, (5 Cir.) 240 F.2d 814.

Defendants' wrongful use of plaintiff's registered trademarks in its competition with plaintiff was itself unfair competition by defendants. *American Auto Association* v. *Spiegel*, supra. It had substantial economic effect upon plaintiff's national interstate business and the District Court had jurisdiction and substantial grounds to protect

plaintiff from defendants' infringement and unfair competition. We do not consider that this case raises the question and we do not hold that the Lanham Act would confer federal jurisdiction for unfair competition when there is no substantial related claim of infringement under the Act.

We find no error in the proceedings, opinion, findings, conclusions or judgment of the trial court. Affirmed.

The petition for rehearing is denied.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.